

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MICHAEL LATHAM and ANGIE LATHAM, Case No. 11-11678

Plaintiffs, Victoria A. Roberts  
v. United States District Judge

ACCREDITED HOME LENDERS, INC., *et al.*, Michael Hluchaniuk  
Defendants. United States Magistrate Judge

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**REPORT AND RECOMMENDATION**  
**DISMISSAL FOR FAILURE TO TIMELY EFFECTUATE SERVICE**

**I. PROCEDURAL HISTORY**

This matter was removed to federal court on April 18, 2011. (Dkt. 1). This matter was referred to the undersigned for all pretrial proceedings. (Dkt. 17).

A review of the file indicates that service of the summons and complaint has not been made on defendant Accredited Home Lenders, Inc. in this action. Pursuant to Federal Rule of Civil Procedure 4(m), if service of the summons and complaint has not been accomplished within 120 days after the filing of the complaint, the Court may dismiss an action without prejudice or direct that service be effected within a specified time. Thus, on October 23, 2012, the Court issued an order directing plaintiffs to show cause in writing on or before October 30, 2012 why they have failed to make service of the summons and complaint in this matter.

(Dkt. 34). The deadline has passed and plaintiff has failed to respond.

For the reasons set forth below, the undersigned **RECOMMENDS** that the complaint against defendant Accredited Home Lenders be **DISMISSED** without prejudice.

## II. ANALYSIS AND CONCLUSION

Federal Rule of Civil Procedure 4(m) provides that if service is not effectuated within 120 days the Court must dismiss the action without prejudice as to that defendant. “Absent a showing of good cause to justify a failure to effect timely service, the Federal Rules of Civil Procedure compel dismissal.” *Byrd v. Stone*, 94 F.3d 217, 219 (6th Cir. 1996), citing, *Habib v. General Motors Corp.*, 15 F.3d 72, 73 (6th Cir. 1994). It is plaintiff’S burden to establish good cause for failing to timely effect service. *Habib*, 15 F.3d at 73. Further, Local Rule 41.2 provides that if the parties have not taken action within a reasonable time, the Court may enter an order dismissing the case for lack of prosecution.

Plaintiff failed to serve the summons and complaint after being warned that failure to do so could result in dismissal. (Dkt. 34). Therefore, the undersigned recommends that plaintiff’s complaint against defendant be dismissed without prejudice pursuant to Rule 4(m) and Local Rule 41.2. *See Habib*, 15 F.3d at 73 (“Absent a showing of good cause to justify a failure to effect timely service, the Federal Rules of Civil Procedure compel dismissal.”).

### III. RECOMMENDATION

Based on the foregoing, the undersigned **RECOMMENDS** that plaintiff's complaint against defendant Accredited Home Lenders, Inc. be **DISMISSED** without prejudice pursuant to Rule 4(m) and Local Rule 41.2.

The parties to this action may object to and seek review of this Report and Recommendation, but are required to file any objections within 14 days of service, as provided for in Federal Rule of Civil Procedure 72(b)(2) and Local Rule 72.1(d). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1981). Filing objections that raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health and Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to Local Rule 72.1(d)(2), any objections must be served on this Magistrate Judge.

Any objections must be labeled as "Objection No. 1," "Objection No. 2," etc. Any objection must recite precisely the provision of this Report and Recommendation to which it pertains. Not later than 14 days after service of an objection, the opposing party may file a concise response proportionate to the objections in length and complexity. Fed.R.Civ.P. 72(b)(2), Local Rule 72.1(d).

The response must specifically address each issue raised in the objections, in the same order, and labeled as “Response to Objection No. 1,” “Response to Objection No. 2,” etc. If the Court determines that any objections are without merit, it may rule without awaiting the response.

Date: October 31, 2012

s/Michael Hluchaniuk  
Michael Hluchaniuk  
United States Magistrate Judge

### **CERTIFICATE OF SERVICE**

I certify that on October 31, 2012, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send electronic notification to the following: Douglas A. McKinney, Joseph H. Hickey, Laura Baucus, and David J. Council.

s/Tammy Hallwood  
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